

Message Text

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INFO AMEMBASSY LONDON

AMCONSUL HONG KONG
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AMEMBASSY BRIDGETOWN

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E.O. 11652: N/A

TAGS: EAIR, UK

SUBJECT: CIVAIR - US-UK AIR SERVICES AGREEMENT

SUMMARY AND ACTION REQUESTED: ON JUNE 22 US AND UK INITIALED IN LONDON NEW AIR SERVICES AGREEMENT TO REPLACE 1946 PROTOTYPE CIVAIR BILATERAL (COMMONLY KNOWN AS BERMUDA AGREEMENT) WHICH EXPIRED AT MIDNIGHT JUNE 21. SINCE MANY GOVERNMENTS MAY VIEW NEW AGREEMENT AS SIGNALING SUBSTANTIAL CHANGE IN US AVIATION POLICY AND MAY IN TURN SEEK UNDESIRABLE MODIFICATIONS OF THEIR AVIATION AGREEMENTS WITH US, DEPTOFFS HAVE SOUGHT OCCASIONS DURING PAST WEEK TO BRIEF SEVERAL EMBASSIES TO DESCRIBE NEW AGREEMENT AS UNIQUE IN SEVERAL ASPECTS TO US-UK AIR TRANSPORT MARKET AND CONSISTENT OVERALL WITH FUNDAMENTAL US OBJECTIVES.
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ACTION ADDRESSEES ARE REQUESTED TO SEEK OPPORTUNITIES TO CONVEY SIMILAR MESSAGE TO APPROPRIATE LOCAL AVIATION OFFICIALS AND OTHER OFFICIALS WHO INFLUENCE GOVERNMENT AVIATION POLICIES DRAWING ON THIS TELEGRAM. END SUMMARY.

1. INTRODUCTION. THE UK DENOUNCED THE US-UK AIR SERVICES AGREEMENT OF 1946 (THE BERMUDA AGREEMENT) ON JUNE 22, 1976, EFFECTIVE MIDNIGHT JUNE 21, 1977. SIX NEGOTIATING SESSIONS OF MANY WEEKS' DURATION EACH ALTERNATED BETWEEN WASHINGTON AND LONDON DURING THE PAST YEAR. THE FINAL SESSION

LITERALLY WENT UP TO THE LAST POSSIBLE MOMENT BEFORE ACCEPTABLE AGREEMENT WAS REACHED ON KEY ISSUES, THEREBY AVERTING A CESSATION OF AIRLINE SERVICES BETWEEN THE TWO COUNTRIES. THE USG WAS FIRM IN ITS POSITION THAT AIR SERVICES BETWEEN THE US AND UK WERE TOO IMPORTANT TO BE ALLOWED TO CONTINUE WITHOUT THE CERTAINTY OF CONDITIONS WHICH AN OPERATIVE BILATERAL AVIATION AGREEMENT PROVIDES. USG HAD, IN FACT, TAKEN NECESSARY LEGAL AND ADMINISTRATIVE STEPS TO SUSPEND ALL US-UK AIR SERVICES EFFECTIVE JUNE 22 IF NEW AGREEMENT HAD NOT BEEN REACHED. NEW AGREEMENT WHICH WILL BE REVIEWED BY BOTH SIDES AND SIGNED IN BERMUDA--PROBABLY IN MID-JULY--WILL PROVIDE INTERGOVERNMENTAL BASIS FOR AIRLINE SERVICES BETWEEN THE TWO COUNTRIES. NEW FEATURES OF AGREEMENT OF LIKELY INTEREST TO FOREIGN GOVTS ARE PROVISIONS RELATING TO DESIGNATION OF AIRLINES, THE

REVIEW OF NORTH ATLANTIC CAPACITY, AND CHARTERS. NEW CONCEPTS ARE INCORPORATED IN ARTICLES DEALING INTER ALIA WITH TARIFFS, SECURITY, COMMERCIAL OPERATIONS IN RESPECTIVE TERRITORIES, DISPUTE SETTLEMENT, AND USER CHARGES.

2. CAPACITY.

A. THE CAPACITY ARTICLE OF THE NEW AGREEMENT IS SIMILAR TO THAT IN THE ORIGINAL BERMUDA AGREEMENT AND SOME 60 OTHER BILATERAL AGREEMENTS MODELED AFTER IT. IN ADDITION, HOW-
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EVER, THE NEW AGREEMENT CONTAINS A CAPACITY ANNEX WHICH IS DESIGNED SPECIFICALLY TO ELIMINATE COSTLY, EXCESS CAPACITY. THIS ANNEX APPLIES ONLY TO COMBINATION (I.E., PASSENGER PLUS BELLY CARGO) SERVICES AND ONLY TO SUCH SERVICES IN THE NORTH ATLANTIC; THE CAPACITY ARTICLE OF THE MAIN AGREEMENT (I.E., THE TRADITIONAL BERMUDA CAPACITY PROVISIONS WHICH LEAVE DECISIONS CONCERNING OPERATIONS ON AGREED ROUTES TO AIRLINE MANagements) APPLY ON ALL OTHER US-UK ROUTES AND TO NORTH ATLANTIC CARGO SERVICES. BRIEFLY, THE CAPACITY ANNEX REQUIRES AIRLINES TO FILE ALL SCHEDULES WITH BOTH GOVERNMENTS IN ADVANCE OF WINTER AND SUMMER TRAFFIC SEASONS. IF A SCHEDULE INVOLVES AN INCREASE IN FREQUENCY OF SERVICE (I.E., NUMBER OF FLIGHTS) AND ONLY IN THAT CASE, EACH GOVERNMENT HAS A RIGHT TO OBJECT IF IT BELIEVES AN INCREASE BY AN AIRLINE OF THE OTHER COUNTRY IS NOT WARRANTED BY MARKET CONDITIONS. THAT OTHER COUNTRY THEN REVIEWS THE INCREASE INVOLVED AND MAY WORK OUT ADJUSTMENTS OF THE INCREASE WITH ITS AIRLINE OR ADVISE THE OBJECTING GOVERNMENT THAT IT FINDS THE INCREASE WARRANTED. IF THE OBJECTING GOVERNMENT IS STILL DISSATISFIED, IT MAY REQUEST CONSULTATIONS. OBJECTIVE OF SUCH CONSULTATIONS WILL BE TO AGREE ON MARKET GROWTH FORECASTS AND CORRESPONDING VALIDITY OF INCREASE PROPOSED BY AIRLINE. HOWEVER, IF GOVERNMENTS DISAGREE, AIRLINES CAN STILL

INCREASE THEIR FREQUENCY OF SERVICE BY AMOUNT EQUIVALENT TO AVERAGE OF EACH GOVERNMENT'S MARKET FORECAST OR BY A STIPULATED AND LIBERAL MINIMUM, WHICHEVER IS GREATER. THE ANNEX EXPIRES BY ITS OWN TERMS IN SEVEN YEARS UNLESS OTHERWISE EXTENDED OR AMENDED BY MUTUAL AGREEMENT.

B. IN DISCUSSING CAPACITY ANNEX, EMBASSIES SHOULD STRESS
(1) THAT ONLY INCREASE IN FREQUENCY OF SERVICE, NOT SEAT
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CAPACITY, IS CHALLENGEABLE. HENCE, AIRLINES ARE FREE TO

SHIFT FROM NARROW TO WIDE-BODIED EQUIPMENT; (2) THAT UNLESS BOTH GOVERNMENTS AGREE OTHERWISE, AIRLINES ARE FREE TO INCREASE FREQUENCIES BY AN AMOUNT RELATED TO PERCEPTION OF MARKET GROWTH. HENCE, NEITHER GOVERNMENT HAS VETO OVER THE OPERATIONS OF THE OTHER'S AIRLINES AND NEITHER GOVERNMENT CAN USE THE CAPACITY ANNEX FOR MARKET SHARING PURPOSES; (3) THAT EITHER GOVERNMENT CAN PERMIT THE ANNEX TO EXPIRE IF IT BELIEVES IT IS BEING USED FOR PURPOSES OTHER THAN THE ELIMINATION OF UNUSUAL CASES OF EXCESS CAPACITY OR IS OTHERWISE UNHAPPY WITH IT; AND (4) THAT THE CAPACITY ANNEX IS DESIGNED FOR AND IS PROBABLY UNIQUE TO US-UK MARKET.

3. DESIGNATION OF AIRLINES. THE NEW AGREEMENT PERMITS EACH COUNTRY TO DESIGNATE TWO FLAG CARRIERS TO OFFER COMBINATION SERVICES ON TWO NORTH ATLANTIC ROUTES BETWEEN US AND UK CITIES (PROBABLY NEW YORK AND LOS ANGELES). ON OTHER NORTH ATLANTIC ROUTES ONE AIRLINE FROM EACH COUNTRY WILL OFFER SERVICE UNTIL MARKETS REACH A STIPULATED SIZE, WHEN ADDITIONAL AIRLINES CAN BE DESIGNATED. THERE ARE NO RESTRICTIONS ON DESIGNATION IN PACIFIC, CARIBBEAN, OR BERMUDA.

4. ROUTES.

A. AIRLINES OF BOTH COUNTRIES WILL HAVE NEW NONSTOP AUTHORITY BETWEEN ATLANTA, HOUSTON, DALLAS/FORT WORTH AND LONDON. US RETAINS RIGHTS (SO-CALLED FIFTH FREEDOM RIGHTS) TO CARRY PASSENGERS BETWEEN LONDON AND POINTS IN GERMANY, AND BETWEEN LONDON AND POINTS ON PAN AM'S ROUND-THE-WORLD SERVICES. US WILL PHASE OUT CURRENTLY UNUSED OR UNDER UTILIZED FIFTH FREEDOM RIGHTS OVER FIVE-YEAR PERIOD. IN PACIFIC US GAINS NEW RIGHTS TO CARRY PASSENGER TRAFFIC BETWEEN OSAKA AND HONG KONG AND HONG KONG AND SINGAPORE. UK WILL RECEIVE RIGHTS BETWEEN HONG KONG AND AN ADDITIONAL LIMITED OFFICIAL USE
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WEST COAST POINT. ADDITIONALLY, US AIRLINES HAVE SECURED SIGNIFICANT GUARANTEES OF OPERATIONAL FREEDOM AND FLEXIBILITY IN PROVIDING SERVICES ON ROUTES (SEE B 3, 4, 5 BELOW). ROUTE RIGHTS FOR ALL-CARGO SERVICES ARE SOMEWHAT DIFFERENT BUT ESSENTIALLY FOLLOW PATTERN OF ROUTES FOR COMBINATION SERVICES.

B. IMPORTANT POINTS EMBASSIES SHOULD STRESS WITH RESPECT TO ROUTES ARE THAT (1) ROUTES FROM NEW US GATEWAY CITIES ARE ECONOMICALLY JUSTIFIABLE FOR AIRLINES OF BOTH COUNTRIES AND AIRLINES OF BOTH COUNTRIES WILL INCREASE REVENUES; (2) US RETAINS AND SLIGHTLY EXPANDS "BEYOND" RIGHTS HAVING COMMERCIAL SIGNIFICANCE AND GIVES UP ONLY UNUSED OR marginally USED RIGHTS; (3) AIRLINES ARE FREE TO CARRY THROUGH AND ON-LINE CONNECTING TRAFFIC AT UK POINTS TO ANY OTHER

POINT IN WORLD; (4) AIRLINES ARE FREE TO OPERATE POINTS ON ROUTES IN ANY ORDER AND IN EITHER DIRECTION; AND (5) AIRLINES ARE FREE TO CHANGE GAUGE (I.E., CHANGE AIRCRAFT TYPE) IN TERRITORY OF OTHER COUNTRY OR IN THIRD COUNTRIES.

5. TARIFFS. AGREEMENT INCLUDES A NEW PROVISION DESIGNED TO ENABLE EACH GOVERNMENT, IN ACTING ON IATA AGREEMENTS AND INDIVIDUAL AIRLINE TARIFFS, TO APPLY SAME OR COMPARABLE STANDARDS IN ORDER ASSURE THAT PRICES ARE PROPERLY RELATED TO COSTS OF EFFICIENT AIRLINES. WORKING GROUP WILL BE ESTABLISHED TO MAKE RECOMMENDATIONS ON SUCH STANDARDS. THIS PROVISION SHOULD REDUCE LIKELIHOOD OF INTERGOVERNMENTAL DISAGREEMENTS ON TARIFFS.

6. NEW PROVISIONS. NEW AGREEMENT INCLUDES SEVERAL PROVISIONS NOT FOUND IN OTHER BILATERAL AIR TRANSPORT AGREEMENTS, PRINCIPAL ONES OF WHICH ARE AS FOLLOWS:

A. USER CHARGES ARE NOT TO EXCEED FULL ECONOMIC COSTS OF LIMITED OFFICIAL USE
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PROVIDING AIRPORT AND AIR NAVIGATION FACILITIES AND SERVICES. CONSULTATIONS BETWEEN CHARGING AUTHORITIES AND AIRLINES ARE ENCOURAGED BEFORE CHANGES IN USER CHARGES ARE MADE AND PROVISION IS MADE FOR GOVERNMENTAL CONSULTATIONS REGARDING REVISION OF USER CHARGES.

B. AIRLINES HAVE FREEDOM OF CHOICE IN PROVIDING GROUND HANDLING SERVICES THEMSELVES OR BY OTHER AIRLINES OR ORGANIZATIONS. OTHER "DOING BUSINESS" PROVISIONS GRANT RIGHTS TO SELL TICKETS DIRECTLY AND CONVERT AND REMIT REVENUES EARNED WITHOUT RESTRICTION.

C. DISPUTES NOT RESOLVED IN A FIRST ROUND OF CONSULTATION MAY BE REFERRED BY EITHER GOVERNMENT TO ARBITRATION UNDER EXPEDITED PROCEDURES.

7. CHARTERS. FOR FIRST TIME IN MAJOR AIR SERVICES BILATERAL AGREEMENT, CHARTER AIR SERVICES ARE INCLUDED TOGETHER WITH SCHEDULED SERVICES, ALTHOUGH DETAILS REGARDING CHARTERS REMAIN TO BE WORKED OUT AT A FUTURE DATE. IN THE MEANTIME BOTH SIDES HAVE AGREED TO INCORPORATE THE EXISTING MEMORANDUM ON CHARTER SERVICES IN THE BASIC

AGREEMENT AND TO APPLY CERTAIN PROVISIONS OF THE BASIC AGREEMENT TO CHARTERS.

8. CONCLUSION AND ASSESSMENT. WHEN UK DENOUNCED AGREEMENT LAST YEAR IT INDICATED PRIVATELY AT FIRST AND PUBLICLY SOON AFTER THAT IT WAS SEEKING A NEW AGREEMENT WHICH WOULD LEAD TO EQUAL DIVISION OF AIRLINE REVENUES. IT IDENTIFIED

THREE SPECIFIC OBJECTIVES TO ACHIEVE THIS GOAL: (A) AN AIRLINE CAPACITY MECHANISM THAT WOULD PROVIDE FOR EACH SIDE'S OFFERING 50 PERCENT; (B) SINGLE DESIGNATION OF AIRLINES ON EACH ROUTE; (C) REQUIREMENT THAT ALL TRANSATLANTIC SERVICES BE TURNAROUND SERVICES, I.E., NO BEYOND OPERATIONS EITHER WITH OR WITHOUT TRAFFIC RIGHTS.

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9. INITIAL US PREFERENCE WAS CLEARLY MAINTENANCE OF STATUS QUO. US NEVERTHELESS EXPRESSED WILLINGNESS TO NEGOTIATE AND IDENTIFIED ITS OBJECTIVE; AS: (A) AGREEMENT MECHANISM WHICH WOULD CONTROL COSTLY EXCESS CAPACITY BUT WHICH WOULD AVOID MARKET SHARING TENDENCIES; (B) PRESERVATION OF MULTIPLE DESIGNATION WHERE IT IS ECONOMICALLY JUSTIFIED; AND (C) MAINTENANCE OF VIABLE US INTERNATIONAL TRUNK SYSTEM.

10. IT IS CLEAR UK WAS UNSUCCESSFUL IN ITS ATTEMPTS TO IMPOSE AIR TRANSPORT SYSTEM BASED ON PREDETERMINED MARKET SHARES. US ON OTHER HAND WAS SUCCESSFUL IN PRESERVING COMPETITIVE AIR TRANSPORT SYSTEM WITH RESULTING BENEFITS IN TERMS OF PRICE AND CONVENIENCE TO TRAVELING AND SHIPPING PUBLIC. NEW AGREEMENT WILL INCREASE OPPORTUNITIES FOR AIRLINES OF BOTH COUNTRIES AND WILL PROVIDE FOR A MINIMUM AMOUNT OF GOVERNMENT CONSTRAINT ON AIRLINE INNOVATIONS WITH RESPECT TO OPERATIONS AND PRICES. IN ADDITION, NOVEL PROVISIONS DEALING WITH AIR CHARTERS, DOING BUSINESS, AND SECURITY, AMONG OTHERS, MAKE THE NEW AGREEMENT AN IMPROVEMENT ON ITS PREDECESSOR AND, IN THESE REGARDS AT LEAST, A PRECEDENT FOR FUTURE AGREEMENTS. VANCE

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